COURTS

G. R. S. IX-5]

Previous references.

1891-2
~~191~~ .
(Cts.)

Later references.

COURTS

File No. 1 of 1891

Serial Nos. 1-3.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-3.

Part B for

SUBJECT.

Fees to be paid to Govt. Advocate & Public Prosecutors.

W D 88—GPB—50,000—24-7-16

Indexed

Memorandum.

Whether the Govt advocate should be exempted from appearing before the chief Court to support convictions is a question which the judges have no power to decide. If the Govt considers it expedient or desirable to exempt him from the performance of this duty, I think that another officer ought to be appointed to represent the Govt in criminal appeals made to the chief court.

The Public Prosecutor has been doing this work in addition to his work as Public Prosecutor before the Sessions Judge. The combination of these two offices has caused us inconvenience at times & delay in disposal of appeals.

At the beginning of every month, he is obliged to absent himself from the chief court

for a week or ten days & we are obliged to adjourn criminal appeals to suit his convenience.

If during his absence a party wishes to make an application to us under sec 526 of the code of Criminal Procedure, there is no Public Prosecutor to receive notice of the application & to put himself into communication with the magistrate concerned.

If the Government advocate advises the Government to make an appeal against an acquittal, I think it is nothing but proper that he should be required to support his opinion. I do not think it right that an opinion recommending an appeal should be given by the Govt advocate, & that another officer, who perhaps had no voice in the matter, or who thinks that there are no grounds for an appeal, should

be required to support the appeal. If the Court
resolves to exempt the first advocate from
appearing before the Chief Court, I think that
the responsibility for advising the Government
in the matter of appeals from acquittals
ought to be thrown upon that officer who was
said to appear before the Chief Court.

Upon the rule we have
been following in the matter of serving notices
of appeals to the Public Prosecutor is not right
& requires revision. We have been of late
serving notices to the Prosecutor in important
appeals only. This is not legal. We have no
power to say in what cases he is to appear
& in what cases he need not appear. If we
do not reject an appeal summarily, we
are bound, under Sec 422 of the Pro Code, to
give notice thereof to the appellant & to the Pro
secutor. We will have to report the matter

to the magistrate of the district from which the appeal is made, & to receive instruc-
tions from the magistrate as to opposing
the appeal. Last year we rejected about
sixty appeals & admitted about 100 appeals.
This year too the number may be almost
the same. In how many of these 100 appeals,
District magistrates will instruct the Prosecutor
to support the Convictions we do not know.
This much I wish say, that the Government
ought to direct the Public District magistrates
to instruct the Govt advocate or the Public Pros-
or whoever may appear on behalf of Govt.
in all cases except the most petty cases. If
we take into Consideration the nature of
the cases that come before us, I think I may
say that the Government ought to be repre
-sented in at least sixty to seventy percent
of the appeals.

V/

To support convictions in sixty or seventy appeals, to represent the Govt in all applications made under sec 526, & to advise the Government in regard to appeals from acquittals is fair work for one officer; & I think that this ought not to be added to the work of Public Prosecutor in the Sessions Court. A consolidated pay fixed once for all or fees may be given to him in each case according to the amount of labor involved. But I would prefer consolidated pay as it is very often a difficult matter to fix remuneration according to the quantity of work.

I wish to make a suggestion personally in regard to all public Prosecutors. When one may be appointed for three years & at the end of the term, the Government may either reappoint them or appoint others if found

to the better qualified men. The Patronage of Government will be better distributed. The direct & indirect benefits are many. I presume to have read an order of the Madras Government to this effect. I do not know whether it is in force in particular districts or throughout the Presidency

I beg to annex two letters which were addressed to me by the Public Prosecutors of Tanjore & Calicut in answer to the letters I wrote to them. They show what re= = muneration the Public Prosecutors of those districts receive & on which principle they are paid.

18 August 1891 A Mannarkandy Nayar

Tanjore
12 August 1891

My Dear Friend

I am in receipt of your kind letter of the 3rd Instant and the informations therein asked for are herein under given

There is a fixed pay of Rs 50 attached to the office of Public Prosecutor and Government Pleader This is intended as a sort of Reta and the Public Prosecutors cannot without the leave of the Distrct Magistrate take up the defence in any criminal case nor can he accept engagement

against Government in civil Suits where Government is a party In all cases before the Sessions Court the Public Prosecutor is paid ordinarily a fee of Rs 20 to 50 Rs a case. In exceptional Cases under special application a higher fee is sanctioned with the previous sanction of Government. So in civil cases the Regulation fee is generally paid.

2) In the case of Criminal appeals the District Magistrate here ordinarily sanctions a uniform fee of Rs 15

3) In Criminal appeals the Sessions Judge frees Public Prosecutor notice to support

convictions which Notice is forwarded to the District Magistrate who in a majority of cases instructs Public Prosecutor to appear and support the conviction

4 In cases in which Public Prosecutor appears before a Magistrate to prosecute a case a daily fee is generally paid, in head quarters a daily fee of Rs 25 and for outstations a fee of Rs 30 to 50 Rs a day

5 Taking the average for 4 years my income as Public Prosecutor alone has been Rs 2300 a year

yours sincerely

H Chamarbaugh

Calicut

6th August 1891

Respected Sir

Your letter of the 3rd Instant
to hand.

My fixed pay as Govt Pleader &
Public Prosecutor is 50 Rupees
per mensem.

I get fees in each sessions case
the amount is fixed by the Dist
Magistrate with reference to the
nature of the case & time occupied
for trial. The average fee for
each case is from 20 to 25 Rupees
if the case takes a whole day then
the fee is between 40 & 50 Rs - If
the case is very simple as in the
case of old offenders who plead
guilty or who are caught

(5) The average annual income of Govt Pleader & Public Prosecutor after taxes in Civil Cases may be fixed at 2200/Rs as follows:-

Pay at 50 Rs. ——

about 50 sessions case at ×20 = 1000 ——

about 30 criminal appeal at 15Rs = 450 ——

2050 ——

Other criminal cases before Magistrate —— 100 ——

2150 ——

Yours obedly

G Thomas

the fee is 15 Rupees -
the & act - such cases are very rare -

(31) The following procedure is observed in Criminal appeals in the Sessions Court - If the Judge admit the appeal the Public Prosecutor is served with the notice of the hearing. The Public Prosecutor has to forward the petition to the Dist Magistrate for instructions - The Dist Magistrate forwards the petition to the Magistrate against whose decision the appeal is preferred - That Magistrate reports to the Dist Magistrate whether in his opinion the appeal is one in which the Public Prosecutor should appear in support of the Conviction - If he reports that he should appear the Dist Magistrate instructs the Public Prosecutor to appear in support of the conviction The fee in each case is from 15-620 Rs. & in a few cases 25 - The Dist Magistrate fixes the fee after we report the result

of the appeal - There will be about 50 to 60 Criminal appeals in a year & out of which will be opposed - about 40 or 45 will be rejected by the Judge with-out any notice to the Public Prosecutor - & the Magistrates find it unnecessary to oppose in other cases.

(4) For cases prosecuted before Magistrate fee is fixed by the Dist Magistrate with reference to the nature of the work & time occupied for trial - from 25 to 50 Rs - If the case will be over in a day the fee is 25 Rs - If it takes 2 or 3 days - 50 Rs - If it takes more a higher fee will be allowed - Cases in which the Public Prosecutors are asked by the Dist Magistrate to prosecute before Magistrates are very rare - In my experience these were 2 cases in 1894 & only 1 case up to date this year

In the matter of the Bills sub
mitted by Mr Ramaswami
Ayyar he alleges the authority
of Govt. orders under which
he has acted and which sanction
the scale or rate of fees he has
adopted. If there was any under
standing on the subject between
Mr R. and Govt the standing
ordermare the best guide. Mr R
says he has adhered to those or-
ders and they seem to support
him. Under them a Vakil
he is entitled to receive what
he has claimed.

In Myard who is continuing as heretofore to appear in the Chief Court the practice is attended with great inconvenience. Mr Ramachandra has entered into this part of the case very fully and it is unnecessary that I should repeat all that he has said - I am quite of the opinion that the Officer who has watched the proceedings from day to day in the Court should not have watched the proceedings of any other Court. The defendant in the case of utilizing the Public Prosecutor of Nandidroog being found impossible the question submitted for an opinion

resolves itself into
whether the Govt Advocate
holders also the Keepers Clerk
See if may be dispensed to
undertake this work
or whether a third and another
officer ought to be appointed.
The Govt Advocate expressed strongly
concurring to appoint another
officer and would, if practicable
avoid such appointment. But
the difficulty in this way is the
fact that in addition to the
being the Legislative Secretary
the present incumbent
the Govt Advocate is also the Registrar
General & Registration and there is
no Member of the Service who can relieve
him of this work as the Registrar

Sawami Aiyyangar has already
got sixty/-. I have record my
opinion on this part of the subject
with great hesitation & diffidence
as I am not sure whether I am
called upon to take it. I think
the Legislative Secretary and Sort
Additional have to perform such
duties as are very nearly the same.
It is highly advantageous that
both the law-making and law-
expounding and the experience
obtained in both the directions
will act and react upon each
other and the result will be very
useful - In this view, and for the
reasons which it is needless to
repeat, and especially having

2/

duties as either the Registrar of the Chief Court or the Excise Commissioner. The duties of the latter Office are comparatively light and the addition of this slight work should not make him grumble. The Hermaph Rec the present Registrar of the Ch Court is a highly paid Officer, more than what an ordinary Registrar is expected to get and he might be glad to have this addition of work for the extra pay which the Govt has allowed him to draw. As far as my experience of the Chief Court goes I do not think that it will be inconvenient for the Registrar to undertake this

addition of work [illegible]
I quite agree with Mr Rama
chandra Ayyar in thinking
that the Advocate General in legal
matters and the Government pleader
in the Chief Court should be the
same person for the reasons
already given. I would not be
in favour of the separation of
the duties of the Legislative Secretary
and the Advocate General
of the Settlement in the Chief Court
is found impracticable there is
no alternative but to appoint
a separate Officer having
regard to the fact that his income
may not be drawing five hundred
Rupees for doing the same duties
I would not object to his receiving

who will have to do nearly
all those duties getting half
of the allowances. A first class
Builder & a 1st-class Insp
get as much, and an Officer
of sort of special legal training
and qualifications, who has
in the first place to sort
how to act, and then to the
2nd to defend such action
in the highest Court of Justice
cannot be expected to accept
less

W. Wilkins Bancroft

29.8.91

Dear Mr. Cumbrechtlezer

I request you to
obtain information for me
on the points noted below

(1) What is the amount of fees
which was paid to the Public
Prosecutor from July 1890 to July 1891
for having appeared in the Chief Court
to support convictions from made
by Magistrates, to oppose applica-
tions made for transfers & for
other criminal work done
the Chief Court.

(3) What fees have been paid to

public Prosecutors in Tokyo
& Shimoza in the last three ye
over & above their duty for hearing
interpreting conflictions made by
mayors & for sundry criminal work

The complainer may be
able to furnish all information
If he is unable to give information
touching point 2, it may be ob
through the Judges.

Sincerely
your sincerely
A Macnaughtan

3. Aug 91

1818

My dear Mr Ramachandra Iyer

The Sub. stated enclosed
given. I believe. the information you
wanted —

I think the present system
of allowing Mr. Pulbrook of Mundy
to happen for the Post Asst
is very inconvenient. Letters
unnecessary lost in Post

If the appointment of Post
Asst is to be maintained
effect must be given to what
is stated in Memo No 8916 of 12.7
Rs 1000 was given as the consolidated
pay of the Post Asst Rajahmundry
on the understanding that he should
appear in all Post cases without

claiming any fees – Why the Post Asst of N.D should be made responsible for him in the Court of first resort There is hard & fast work for a Post Asst, and it seems unnecessary to append a separate Office for the Court of work.

As regards the claim put forward by Rammamy Iyer I am disposed to recommend the grant of Rs 50 extra pay from 1st July 1890 for two years attached to the Post Asst in the Cadre rep[d] to in his letter. The extra clerk has claimed some emolument.

If the appointt of Post Asst is done away with, we may have a separate Sub Court for an Court. The pay may be fixed at Rs 200 Rs – or Rs 50 less than the pay of an Asst Court Grade or 1st / Grade.

Yours

Mungeli

1888-89	176
1889-90	X 576
1890-91	176

Mysore

1888-89	192
1889-90	68
1890-91	X 1668

JR
7/8.

X These two demos seem to include Fees drawn by them in Govt Civil Cases. It will take some time to take out each Bill to see whether this for Civil or Criminal Cases — If

Should such Bills for Appearance in Courts of Justice be included in Fees drawn by Officials — As it is 1/8

In Mysore and Shimoga, what fees did Public Prosecutors receive in the years 1888 1889 - 1890, for appearing to support Convictions of the Magistracy & for doing other Criminal work.

R. Naidoo & Gopaul Iyengar

Bangalore
July 18 90

For 1716

Fees paid to S. Ramaswamiyer Public Prosecutor

from 1st January 1890 to 31st July 1891.

Criminal & K

To support the conviction passed by the 1st Class Magistrate Closepett Subdivn	16 — —
Criminal appeal Case No 10 of 1890	16 — —
Criminal Case No 916 of 1889	16 — —
Criminal Case No 6 of 1890	16 — —
Crimil Case No 23 of 1889 Mr Smith through Ramaswamiyer	16 — —
Crimil Case No 180 of 1890	16 — —
Crimil appeal No 157 of 1889	16 — —
— Do — " 27 of 1890	16 — —
— Do — " 83 of 1890	16 — —
Crimil petition Case transferred from Munsiff Magistrate Chittaldroog	16 — —
Criminal Case No 315 of 1890	16 — —
— Do — " 1 of 1890	16 — —
— Do — " 200 of 1890	16 — —
Criminal petition Case No 92 of 1890	16 — —
— Do — " 11 of 1891	—
× — Do — " 561 of 1890 before the Town Magte of Bangalore on 11th & 18th Decr 1890 15th & 17th Jany and 13th Febry 1891 at Rupees 32 per day.	160 — —
— Do — No 16 of 1891	16 — —
— Do — " 14 of 1891	16 — —
— Do — " 28 of 1891	16 — —
— Do — " 27 of 1891	16 — —
— Do — " 53 of 1891	16 — —
— Do — " 24 of 1891	16 — —
Crimil application — " 52 of 1889	16 — —
Case No 6 of 1889 on the file of this Court and No 7 of 1890 in the 1st Court Kandidroog On 29th 12th Augt 1890 14th Novr 1890 and 21st 14th May and 22d June 1891 before District Court	35 — —

531-

Dear Sir Chamberlayne

Last Evening, I submitted a memorandum on this subject. I did not consider the question of exempting the Govt advocate from appearing before the Chief Court, as I thought that the Judges have no voice in the matter, & as the Imperial Statute contains an expression of his opinion that the Govt advo "can't put in appearances in the ordinary course of judicial business, with his present duties as Legislative Secretary & Assistant Registrar".

If, however, you require me to express my opinion on the point, I must say that I do not see how the Govt advocate can refuse to attend or how

the Government can exempt him from appearing
If it is considered derogatory to his office
of Assistant Counsel of Registration to compel him
to appear in Court, I would recommend that
he should not be called Post advocate. To call
him Post advocate, to give him consolidated
duty in consideration of the appearances in
Court, & to exempt him from appearances,
& to appoint another to do that portion of his
work, with subject the Government to strong
& adverse comment. How is it right to call
an officer Post advocate & to exempt him
from doing the most important portion of
his work, viz supporting convictions? I have
stated in my memorandum that in
the matter of advising appeals against
acquittals, the work & responsibility for

Considering of India ought to be thrown on
that officer whose duty it is to attend the affairs
in Court. If these two important functions
are not exercised by the Government advocate,
his office ought to have a very disproportion
& his pay must be fixed in other considerations.
If he is not to appear at all,
I do not see how the Government can avoid
making a fresh appointment. I agree with you
that it is inexpedient to ask the Public Prosr
& Vandy Dirr to do the work in addition to
his legitimate work. I have given my reasons
in the memorandum I submitted yesterday.
If a new Officer is to be ap
pointed Rs 200 may be reasonable enough.
But I have a sentimental objection to it.
The officer who is the mouthpiece of Govt
in the highest Court in the land ought not
to be inferior in rank to an Asst Commrs

If there are strong objections to fix the pay at Rs 250, I think it better to give the advocate a retaining fee of Rs 100 per annum & to give fees in each case, at a rate = from rate increasing if the heaviness or length = ness of work.

In regard to the bill which has been submitted by the Public Prosecutor, I do not see on what principle we can recommend Rs 50 a month. If the proceedings of = not fixed the pay, it is a matter of contract, & there is no rule to be laid on the subject. When there is no contract, it is unfair in principle to give him Rs 50 a month for the work which the last advocate on Rs 500 a month ought to have done. Instead of forcing a pay of Rs 50 a month on the pro-

vi

I think it fair to him & to the Govt
to give him fees at the uniform rate for
the cases in which he has appeared & to
arrange for consolidated pay for this month.

A Ramachandraiyer

Bangalore
31 aug/91

My dear Sir

About the 20 and of last month I sent you reply to your do of 18 idem, in regard to the fees claimed by the Barrister, Mr Ramasawmy Iyer, for appearing before the Chief Ct for the Govt Advocate I have remitted my charges as desired by you and I enclose them Summons for your perusal

We are all agreed that the present arrangements are unsatisfactory and inconvenient Mr Ramasawmy Iyer finds it

also very inconvenient to go
on circuit to Kolar & Tumkur
during sessions and to appear
in the Chief Ct - Sometimes
we are asked to adjourn the
hearing of Criml appeals to
distant dates but not the
convenience of Mr Ramaswamy Iyer.
We have repeatedly refused his
request as the appellants were
in custody - It seems desirable
that Mr Ramaswamy Iyer as
Public Prosr should be attached
to the Mundwd Dn Sessions Ct
and the Govt Advocate should
as heretofore appear before the
Chief Ct in accordance with

the orders contained in your Memo
No 8716 dd. 12. 2 90 - If Mr Meenachy
549
cannot appear the best plan is to
relieve him of the Govt advocate
ship and appoint a competent
Barrister for the post of Govt advocate
such men as Jagadeo & Rama
Chendra Sahib of Madras will,
I think, clearly come up the appointment
on Rs 500/- If you are not in favor
of this proposal, the next best arrange-
ment is to appoint Ramaswamy Iyer
as Substitute attached to the Court
at Rs 200, to do all the common
work which now devolves on Mr Meenachy
to happen in Separate cases of all
the three Judges before the Court at,
to appeal cases in appeals & revisions
from Moplis courts before the said Court,
and also in all cases in which

applications for licenses are made.
In fact the Subscriber of the Chief Court will not
charge any fee for a Criminal work
of any kind in which he has to
appear before the Chief Court. He may also
be required to prosecute before the Dist
Sessions Judge all Sessions Cases of the
Nawgaloor Dist. For the Kolar Mysore
Dist. you may appoint the H.D.
John Cooper as the Prosecutor. He and
upon a letter to the effect that he will
be regarded as Subscriber of those two Distts
in all trials before the Sessions Court
under S 270 Cr. Code. This will be
a very convenient arrangement, avoid
the necessity of having an add. Govt.
Govt Advr — an appointment which is
quite unnecessary, — and save the Govt
the unnecessary expense now incurred by
paying fees to Subscriber for work which has the
done by Govt Advr.

With regard to the two Halls
sent by Mr Ramaswamy Iyer, the one in which
he has charged Rs 50 for each case includes

Sessions cases of Magistrates Courts
Rajkot Dist. This may be framed.
The other bill in which he
charged Rs 32 /- Each case requires
correction for supplying corrections
in Magistrates cases the minimum
fee allowed by Govt Res 30 April/82
No 1162-66 is Rs 16. The amount has
to be reduced accordingly

In the other Dist Courts where
Subordinate Courts happen to support
convictions in Sessions the fee allow-
ed is only Rs 25. Vide Res 22 May/78
No 1869- In the case of Subordinate
Courts Dist Courts appeals in such cases
the fee has been raised to Rs 50. Vide
Res No 2870 dt 15 Jul 1870 consider this
fee high. No Doubt is now overcome
there is still no difficulty in getting competent
men as Subordinate Judges on Rs 150 a month

the Entire fee may, I think, be reduced to 20 or 25 for Each case The same rules and Power the better - The Solicitors Bills would become heavier in future, if existing arrangements are continued and the Court is exempted from appearing before the Chief ——

Remain
Yours very
R Thomas Tuthill

R Sherlock Esqr
Q.C.
Derrynane Cahirciveen